Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
IP Enabled Services	)	WC Docket No. 04-36
	)	

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

BACKGROUND

On March 10, 2004, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. The FCC's NPRM examines issues relating to services and applications making use of the Internet Protocol (IP). The FCC's NPRM seeks comment on the impact those services will have on the communications landscape and which of its rules should be amended to take into consideration the proliferation of IP technology. The FCC invites comment on, among other things, whether its rules regarding access charges, universal service funding, 9-1-1, slamming, number portability and number administration should be amended to take into consideration that local and long distances service that interconnect with the local telephone network are being provided to customers by companies utilizing the IP format. The FCC further questions what role the State commissions should play in any newly-designed regulatory scheme. The Public

Utilities Commission of Ohio (Ohio Commission) hereby submits its comments and recommendations responding to the FCC's NPRM in the above-captioned proceeding.

INTRODUCTION

Like the FCC, the Ohio Commission heartily welcomes the development of VoIP-enabled services. We believe the potential for growth and proliferation is tremendous and that it will promote facilities-based telephone competition. Ultimately, this will lead to more choices for consumers and less regulation for all forms of telephone service providers. These comments recognize that there could be a variety of VoIP services that do not require regulation. The Ohio Commission offers a suggestion not based on the application of protocols but a test to determine if the exciting new advances in technology involve telecommunication services.

As it has been for decades, the Ohio Commission continues to be vitally interested in promoting diversity and growth in the telecommunications industry, promoting facilities-based local telephone competition and expanding choices for consumers. Indeed, the Ohio General Assembly has specifically charged the Ohio Commission with encouraging innovation in the telecommunications industry, promoting diversity and options in the supply of telecommunications services, and recognizing the continued emergence of a

competition through flexible regulatory treatment —while maintaining the availability of adequate and affordable telephone service to Ohioans. Ohio Rev. Code Ann. § 4927.02 (Baldwin 2004). The Ohio Commission views the impending proliferation of VoIP-enabled services as an important development along the path to telephone deregulation.

Although this nascent technology, when used as a telecommunication service does present important national concerns and results in a growing need for some level of regulatory certainty, the issues are not exclusively federal in nature and there is no need for precipitous action by the FCC. Reaching full competition and eventual deregulation of the entire telecommunications industry are widely-held goals of both Federal and State regulators, but they should not be achieved through disparate treatment of competing providers as an interim solution. Rather, the FCC and State commissions alike should be cautious and disciplined in order to ensure those goals are, in fact, reached.

The real challenge is establishing a standard to assist when sorting through the different applications of VoIP services to determine which of the applications should be considered telecommunication services. Only those applications of VoIP that qualify as a telecommunication service should receive the benefit of regulatory rights and the corresponding regulatory responsibilities.

The Ohio Commission considered previously released positions of industry participants and the prior decisions of the FCC on the topic in order to recommend that the following factors should be used in order to determine when a particular VoIP service is a telecommunications service under federal law. The Commission recommends that a four part test be used to determine which VoIP services receive the categorization of telecommunication service: (1) the provider offers fee-based voice telephony to the mass market, either on a stand-alone basis or bundled with other services, that is a functional substitute for local telephone service; (2) the service transmits information of the user's choosing by originating or terminating calls over the Public Switched Telephone Network (PSTN); (3) the information is received without a net change in form or content; and (4) the North American Numbering Plan (NANP) is used to route the calls. Only when all four factors are met for a particular VoIP service should it be considered as a telecommunications service.

Use of the PSTN to complete calls is a strong indicator that the service is not only a functional equivalent, but is physically routed across the same network in the same manner as other telecommunications services; the PSTN, a substantial asset funded by traditional telephone ratepayers, also dictates a level of parity and fairness among its users. Similar to the use of the telephone network to complete calls, any use of the NANP numbering system by VoIP

providers (either directly or through "CLEC partners") must be a critical factor in determining whether a particular VoIP service is a telecommunications service. Those VoIP services relying on the PSTN and NANP resources derive their value from the resulting connectivity associated with using the PSTN and NANP.

The Ohio Commission believes that these four factors serve to properly distinguish between telecommunications services and information services consistent with the definitions found in the Telecommunications Act of 1996 ("1996 Act"), while addressing challenging issues raised by the impending proliferation of VoIP-enabled services. But even for those VoIP services that are considered telecommunication services the Ohio Commission believes that "light touch" or minimal oversight should be exercised – as is the longstanding practice with other competitive or non-dominant providers of telecommunications in Ohio. For example, Ohio was one of the first States to deregulate the cellular telephone service and has applied a minimalist regulatory structure to that industry for more than decade.

Ohio believes that those VoIP telecommunication providers offering services that satisfy the four-part test outlined above should enjoy certain basic rights: (1) to interconnect efficiently for the exchange of voice traffic, (2) to obtain NANP numbers, assign them and have them published, (3) to access facilities and resources necessary to provide 9-1-1 service, (4) to access rights-of-way, (5)

to be compensated fairly for terminating traffic, and (6) to obtain non-discriminatory access to USF support mechanisms. As a corollary to enjoying those rights, the providers would also have certain basic responsibilities: (1) payment and receipt of applicable inter-carrier compensation, (2) adherence to basic public safety requirements that apply equally to all providers of intrastate telecommunications services (9-1-1, law enforcement cooperation), (3) contribution to USF and TRS funds as applicable, and (4) adhere to limited consumer and service quality obligations.

In presently considering an appropriate regulatory framework for VoIP-based telecommunication services, the Ohio Commission advocates a cooperative federal-state approach with shared responsibility. The Ohio Commission believes that it is premature to attempt to establish a comprehensive or permanent regulatory framework for all VoIP-enabled services at this time. Consistent with the jurisdictional discussion elaborated below, the Ohio Commission believes there are some basic regulatory issues relating to VoIP telecommunication services that should be addressed by the FCC (although not necessarily to the exclusion of any State role). Consistent with Congress' design for shared responsibility under the 1996 Act, there are also some basic regulatory issues that should be reserved for State commissions. Not all VoIP provided services will qualify as a telecommunication service, but a provider that does

must recognize the system in which it operates. Independent of the jurisdictional framework adopted by the FCC, it should consider the important policy concerns outlined by the Ohio Commission in these comments.

DISCUSSION

I. Some VoIP-enabled services are "telecommunications services" under 47 U.S.C. § 153(46) and State commissions retain jurisdiction over those services.

There are a wide variety of far-reaching legal questions relating to VoIP-enabled services reflected in the NPRM–some involve services that are known while others involve services that are presently unknown. The FCC should be careful to only address those services and configurations presently known with a reasonable degree of specificity, as it has done in the *Pulver Declaratory Ruling* and *AT&T Declaratory Ruling*, while refraining from any temptation to categorically address VoIP-enabled services or to apply across-the-board solutions. Although narrowly-tailored definitional clarifications and guidelines may prove to be helpful now, an over-broad ruling that encompasses presently unknown VoIP-related services could serve to unnecessarily escalate the jurisdictional conflict facing State commissions and erode any base of support for the FCC's impending decision. This is an avoidable, not inevitable, turf dispute.

Recognizing the unknown limits of IP technology at this developing stage, the Ohio Commission urges the FCC to be as specific and narrow as possible when addressing the scope of its decision.

A. The Ohio Commission submits that VoIP service providers should operate as telephone companies with some regulatory rights and responsibilities relative to certain services, where: (1) the provider offers fee-based voice telephony to the mass market, either on a stand-alone basis or bundled with other services, as a functional substitute for local telephone service; (2) the service transmits information of the user's choosing by originating or terminating calls over the PSTN; (3) the information is received without a net change in form or content; and (4) the NANP is used to route the calls.

The FCC has already issued two cornerstone decisions recently that involve VoIP services. *See In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45 (February 19, 2004 Memorandum Opinion and Order), 2004 WL 315259 ("*Pulver Declaratory Ruling*"); *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (April 21, 2004 Order), 2004 WL 856557 ("*AT&T Declaratory Ruling*"). In the *Pulver Declaratory Ruling*, the FCC found that pulver.com's computer-to-computer service, which allows network members to communicate for free over the Internet without using telephone numbers, is an unregulated information service. In the *AT&T Declaratory Ruling*, the FCC examined AT&T's phone-to-phone service using IP transmission and found that it was a telephone service,

where: (1) ordinary customer premises equipment is used; (2) calls originate and terminate on the PSTN; and (3) the communication undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology. The Ohio Commission agrees with the result reached in these two watershed decisions; but the more difficult issues involve a variety of service offerings that lie between the two extremes. In addressing the far-reaching issues raised by the NPRM, the Ohio Commission urges the FCC to carefully examine the applicable statutes and apply them in a comprehensive and logical fashion that will survive judicial scrutiny – this will help bring certainty and stability to this industry at a critical period of development.

The 1996 Act defines the term "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. §153(43) (West 2004). The 1996 Act goes on to define "telecommunication service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, *regardless of facilities used*." 47 U.S.C. §153(46) (West 2004) (emphasis added). A "telecommunications carrier" is "any provider of telecommunications services." 47 U.S.C. §153(44) (West 2004). The "telecommunications service" definition was largely "intended to clarify that telecommunications services are

common carrier services." *In the Matter of Cable & Wireless, PLC*, 12 F.C.C.R. 8516 ¶13 (1997); *See also Virgin Islands Tel. Corp. v. FCC,* 198 F.3d 921, 926-27 (D.C. Cir. 1999).

The Act defines an "information service" as:

> [T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control or operation of a telecommunications network or the management of a telecommunications service.

47 U.S.C. §153(20) (West 2004). Thus, telecommunications services are fee-based services that transmit information of the user's choosing "as is" between points of the user's choosing, regardless of the technology or facilities used. And information services are computing capabilities and services, unless those capabilities are used to manage a telecommunications service.

In the "Stevens Report," the FCC recognized certain characteristics of telecommunications services as being distinct, briefly summarized as follows: (1) that the provider holds itself out as providing voice telephony, (2) the telephone equipment used by the customer is the same as an ordinary touch-tone phone used to place a call over the PSTN, (3) telephone numbers are used, and (4) the provider transmits customer information without a net change in form or content. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45,

Report to Congress, 13 FCC Rcd. 11501 (1998). In merging this analysis with the more recent *Pulver Declaratory Ruling* and the *AT&T Declaratory Ruling* and for additional reasons explained further below, the Ohio Commission recommends a different practical test based for applying these statutory definitions.

In order to determine when a particular service is a telecommunications service under federal law, the Ohio Commission recommends that the following factors should be used: (1) the provider offers fee-based voice telephony to the mass market, either on a stand-alone basis or bundled with other services, that is a functional substitute for local telephone service; (2) the service transmits information of the user's choosing by originating or terminating calls over the PSTN; (3) the information is received without a net change in form or content; and (4) the NANP is used to route the calls. If all four factors are met when evaluating a particular VoIP service, then it should be considered a telecommunications service. If not, then it should be considered an information service. The Ohio Commission believes that these four factors serve to properly distinguish between telecommunications services and information services consistent with the definitions found in the 1996 Act, while addressing key issues raised by the impending proliferation of VoIP-enabled services.

Where a fee-based service is offered as a substitute for local telephone service and can be identified as a functional equivalent by consumers, those are

strong practical indications that it is also a telecommunications service. This first factor has a slightly different emphasis than the Stevens Report, in that it focuses on actual functional equivalency rather than whether the provider holds itself out as offering the service as a local service replacement. And the statutory definition explicitly states that the same service characteristics apply regardless of the facilities used, so that is a dynamic element of the test. Just as there was no reason to distinguish between services offered based on analog switches and services based on digital switches, the fact that facilities are now migrating toward packet-switching should not alter the fundamental analysis of whether a service is a telecommunications service. As a related matter, the type of telephone equipment being used (*i.e.,* regular telephone with a separate IP converter versus an IP-equipped phone unit) should not affect the inquiry as long as the four factors are met.

In addition, whether a service is marketed or packaged along with other services or features (including information services) should not affect the individual classification of the service. Evaluating service packages created by VoIP telecommunication providers without regard to the individual components of a package would be arbitrary and would result in disparate regulatory distinctions that encourage regulatory arbitrage. It would be like saying today's service packages that combine local POTS and interstate toll calling should be

classified as strictly interstate services simply because the total package contains an interstate service component.

Another portion of Ohio's proposed test for evaluating VoIP services under federal law, completing calls over the PSTN, is also a logical and factual tie-in with existing telecommunications services. The use of the PSTN to complete calls is a strong indicator that the service is not only a functional equivalent, but is physically routed across the same network in the same manner as other telecommunications services. From perhaps a more abstract, policy viewpoint, VoIP providers' use of the PSTN, a substantial asset funded by traditional telephone ratepayers, also dictates a level of parity and fairness among users of the PSTN. In a similar vein, the FCC's NPRM states that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations…" NPRM at ¶ 61.

Similar to the use of the telephone network to complete calls, any use of the NANP numbering system by VoIP providers (either directly or through "CLEC partners") must be a critical factor in determining whether a particular VoIP service is a telecommunications service. Those VoIP providers that seek to use the PSTN and NANP numbers, while categorically refusing to acknowledge any regulatory jurisdiction or responsibility, plainly seek the "best of both

worlds." Propagating that disparate treatment among competitors would be unfair and unwise.

It is safe to conclude that such VoIP services could never become viable alternatives or substitutes for telephone service without being connected to the PSTN and without the use of telephone numbers to make the calls. The NANP numbering system was created for use with the PSTN and the resulting ubiquitous connectivity is what creates the value of services allowing calls within the network. In fact, it is not an overstatement to conclude that the entire value of VoIP services would be nil without the PSTN and the NANP system (*e.g.*, pulver.com's "free" service). Finally, the remaining criteria in Ohio's proposed test, the "information of the user's choosing" and the "without a net change in form or content," are directly from the statutory definition and are consistent with the FCC's prior analysis on this subject.

The Ohio Commission maintains that some VoIP services satisfy these criteria and should be considered telecommunications services under Federal law.[1] Consequently, State commissions do have authority over VoIP-enabled

[1] The Ohio Commission is offering its positions and recommendations to the FCC in this docket based primarily on Federal law and policy interests at a national level. The Ohio Commission has conducted its own investigation into VoIP services based on Ohio law and that docket remains pending. *See In the Matter of the Commission's Investigation into Voice Services Using the Internet Protocol*, Case No. 03-950-TP-COI. But the initiation of this docket has accelerated the need to formulate positions and provide timely input to the FCC. For example, just because the Ohio Commission is defending and protecting State commission jurisdiction over VoIP service providers, that does not necessarily require a particular level of regulation under State law or suggest that Ohio would, in fact, ultimately develop and enforce specific regulations for every area mentioned in these comments. Instead, the policy arguments

services that are offered as substitutes for telephone service using regular telephone numbers for traffic that is exchanged over the PSTN. Congress has not singled out a specific technology for regulation or deregulation and neither should the FCC. *See Brand X Internet Services v. FCC*, 345 F.3d 1120 (9th Cir. 2003). Just as the PSTN evolved from analog switching to digital switching technology without a required overhaul of the attendant regulatory structure, the current transition from digital switching to packet switching – in and of itself – does not fundamentally change the nature of the PSTN or the regulatory framework applicable to those carriers who use it as a service platform. Instead, there are certain basic obligations (and rights) applicable to carriers who use the PSTN to provide telecommunications services –including those carriers who do so utilizing IP technology as part of their network and service offerings.

By contrast, carriers providing information services that are not substitutes for telephone service and do not complete calls through the PSTN using NANP telephone numbers should not be governed by those basic regulatory obligations. If certain carriers (such as the FWD service addressed in the *Pulver Declaratory Ruling*) wish to provide "pure" IP services using only the Internet and IP addresses to complete communications, then there is no legal or

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and examples made herein are primarily illustrative at this time. Consequently, the Ohio Commission reserves its right to reach legal and policy conclusions in its own docket separate and apart from those positions advocated before the FCC in this docket.

policy justification for considering those services telecommunications services or imposing regulatory requirements. But there is also no legal or policy justification for allowing carriers who do wish to use the PSTN and the telephone numbering system as an operating platform to have "the best of both worlds" by enjoying all the benefits of the regulatory system without adhering to any of the attendant responsibilities.

In general, Ohio believes that those VoIP providers offering services that satisfy the four-part test outlined above should enjoy certain basic rights: (1) to interconnect efficiently for the exchange of voice traffic, (2) to obtain NANP numbers, assign them and have them published, (3) to access facilities and resources necessary to provide 9-1-1 service, (4) to access rights-of-way, (5) to be compensated fairly for terminating traffic, and (6) to obtain non-discriminatory access to USF support mechanisms. As a corollary to enjoying those rights, the providers would also have certain basic responsibilities: (1) payment and receipt of applicable inter-carrier compensation, (2) adherence to basic public safety requirements that apply equally to all providers of intrastate telecommunications services (9-1-1, law enforcement cooperation), (3) contribution to USF and TRS funds as applicable, and (4) adherence to limited consumer and service quality obligations.

B. The FCC should not pre-empt State commission authority over intrastate VoIP services that are properly considered "telecommunications services" under the 1996 Act.

Initially in this regard, the scope and effect of the 1996 Act should be examined relative to retail (consumer) regulatory matters, as distinguished from wholesale (carrier-to-carrier) regulatory issues. The 1996 Act does encompass both interstate and intrastate carrier-to-carrier issues involving *wholesale* telecommunications products and services. Indeed, it is the core purpose of the 1996 Act to promote telephone competition through regulation of the wholesale telephone market. To that extent, the State commissions' jurisdiction over terms and conditions of interconnection and resale issues is governed by Sections 251 and 252 (as is the FCC's jurisdiction). Even so, the 1996 Act plainly conveys substantial authority to State commissions over interconnection and wholesale services (relative to both intrastate and interstate services) and the FCC is not in a position to exercise field preemption powers in this area. As a related matter, Congress was careful to preserve State commission authority over specific areas of carrier-to-carrier regulation such as equal access and nondiscriminatory interconnection restrictions. *See* 47 U.S.C. 251(g) (West 2004).

As referenced above, VoIP-enabled service providers do provide distinct areas of concern relative to wholesale issues: ensuring non-discriminatory interconnection with other carriers, access to rights-of-way, application of

appropriate inter-carrier compensation, provision of E911, universal service funding support, etc. And there is no question that, for those VoIP-enabled services properly classified as "telecommunications services," the negotiation and arbitration processes found in Sections 251 and 252 apply.

Perhaps of even greater importance, the Ohio Commission needs to retain its authority to consider minimal regulations that address basic *retail* issues presented by the impending proliferation of VoIP services. The 1996 Act does not generally affect the regulation of *retail* telecommunications services by State commissions and the traditional dual jurisdiction dichotomy for retail telecommunications regulation is maintained even after the 1996 Act, based on 47 U.S.C. §152(b).

The FCC has previously recognized the limited scope of the 1996 Act amendments relative to State commission jurisdiction over retail intrastate services. From the first NPRM implementing the 1996 Act, the FCC offered the following assurance to States regarding the jurisdictional reservation found in Section 152(b):

> We note that *Sections 251 and 252 do not alter the jurisdictional division of authority with respect to matters falling outside the scope of these provisions*. For example, rates charged to end users for local exchange service, which have traditionally been subject to state authority, continue to be subject to state authority.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (rel. April 19, 1996), 11 FCC Rcd. 14,171 at ¶ 40 (emphasis added; footnote omitted). Hence, the FCC has already acknowledged that Congress' 70-year old jurisdictional reservation of State commission authority over intrastate communication services, found in 47 U.S.C. §152(b), still applies to matters not covered by Section 251.

More importantly, the United States Supreme Court has definitively concluded that the original design of dual jurisdiction over telephone services found in the Communications Act of 1934 survives the 1996 Act amendments. The high Court rejected the notion that Section 152(b) has become a nullity and, instead, reinforced its vitality relative to matters not covered by Section 251:

> After the 1996 Act, §152(b) may have less practical effect. But that is because Congress, by extending the Communications Act into local competition, has removed a significant area from States' *exclusive* control. Insofar as Congress has remained silent, however, § 152(b) continues to function. The Commission could not, for example, regulate *any aspect of intrastate communication not governed by the 1996 Act* on the theory that it had ancillary effect on matters within the Commission's primary jurisdiction.

AT&T v. Iowa Utilities Board, 525 U.S. 366, 381, 119 S.Ct. 721, 731 (note 8) (1999) (emphasis added). Consequently, it is already settled law that the FCC *simply*

cannot preempt State authority concerning areas not granted exclusively to the FCC by the 1996 Act.

When combined, these principles support a rule that the FCC cannot preempt any State regulations (or authority to regulate in the future) concerning wholesale matters not covered by Section 251 and intrastate retail matters generally.[2] As discussed below, there are two narrow exceptions to this general rule: (1) where State regulation amounts to a barrier for local competition market entry, and (2) preemption can occur where Federal and State regulations conflict. Neither exception applies to the issues presented in the VoIP NPRM.

The first potential exception under the 1996 Act is where a State retail regulation can be properly characterized as a barrier to entry under Section 253. As will be explained, however, this narrow preemption of market entry regulations has no application here. Section 253 entitled "removal of barriers to entry" was added in order to open the local telephone markets and eliminate any exclusive franchise arrangements that may have existed at that time in certain States (not Ohio). *See* 47 U.S.C. §253(a) (West 2004). Based on the title of this provision and the language used, the scope of this preemptive clause is limited to

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[2] Similarly, it is true that the FCC could forbear from regulating interstate activity or from certain carrier-to-carrier matters covered by §§ 251 and 252 – even where it determines VoIP services are telecommunications services – consistent with the requirements of 47 U.S.C. § 160. And, although States would be prevented from enforcing the specific provisions of Federal law encompassed in such a forbearance decision, FCC forbearance would not prevent States from continuing to exercise residual State authority over intrastate issues or retail matters generally. 47 U.S.C. § 160(e) (West 2004). Thus, neither preemption nor forbearance can be used to bypass State authority over telecommunications services.

eliminating barriers to entry into the local or long distance telecommunications market. To help the FCC enforce this clause where appropriate, Congress provided for a process involving notice and comment to a particular State commission where specific acts are alleged to be in conflict with Section 253. *See* 47 U.S.C. §253(d) (West 2004).

But Congress was careful to expressly preserve State authority and directly limited the FCC's application of Section 253's preemption clause:

> (b) State regulatory authority
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> Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

47 U.S.C. §253(b) (West 2004). Hence, unless a State regulation applicable to telecommunications services can be properly characterized as a barrier to entry under the process and limits established in Section 253, it is not preempted. And the retention of 47 U.S.C. §152(b), in conjunction with this savings clause, ensures that States retain full jurisdiction over intrastate retail telecommunications services unless those regulations constitute a barrier to market entry. This express reservation by Congress defeats any possibility of the FCC attempting to exercise field preemption over those same matters. In any case, the FCC could

not exercise Section 253 pre-emption in a rulemaking proceeding such as this, particularly since States like Ohio have not even promulgated intrastate regulations that apply to VoIP services.

In the context of the VoIP NPRM, the primary importance of § 253 is Congress' savings clause that preserves State authority over regulatory requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. These are precisely the kinds of regulatory requirements that Ohio wants to preserve the ability to apply to VoIP service providers that offer telecommunication services (but not necessarily exercise the full extent of that authority, especially at this stage in VoIP development). All of Ohio's policy concerns relate directly or indirectly to preserving universal service, public welfare, service quality and consumer safeguards. Thus, §253 preserves State authority for these areas and prevents the FCC from preempting such regulations, if and when the Ohio Commission determines it is appropriate (consistent with Ohio law) to implement such regulatory requirements.

In addition to the reasons already outlined, any attempt at field preemption would directly violate §601 of the 1996 Act which states that the 1996 Act "shall not be construed to modify, impair or supersede Federal, State or local

law unless *expressly* so provided." Pub. L. No. 104-104 §601(c)(1), 110 Stat. 56 (1996), 47 U.S. C. §152 note (emphasis added). Even without the savings clauses in §601 and §253, there is already a special burden when pre-emption touches an area traditionally regulated by States. When Congress legislates in a field that the States have traditionally occupied, the Court must assume that the historic police powers of the States were not to be superseded by the Federal Act, unless that was the clear and manifest purpose of Congress. *See, e.g., Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 542, 121 S. Ct. 2404, 2414, 150 L.Ed.2d 532 (2001); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 1152, 91 L.Ed. 1447 (1947). It has long been settled that "the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *New Orleans Public Service, Inc. v. City of New Orleans*, 491 U.S. 350, 365-366, 109 S. Ct. 2506, 2517, 105 L.Ed.2d 298 (1989) (and cases cited therein). The presumption against pre-emption of State police power regulation results in a narrow reading of even an expressly *pre-emptive* provision. This narrow inquiry is particularly appropriate in light of the broad savings clause found in 47 U.S.C. § 253 and the limitation on preemption found in 47 U.S.C. § 601. In short, there is no plausible basis for the FCC to attempt a broad-based preemption of State commission authority concerning VoIP telecommunication services.

The second potential exception to the general rule that the FCC cannot preempt State authority is where conflict exists between the 1996 Act and a State law. Conflict pre-emption can occur where the State law stands as an obstacle to the purposes of fulfillment of the Federal Act. *See Crosby v. National Foreign Trade Council*, 531 U.S. 363, 378 (2000). This form of implied "conflict" preemption can occur where dual compliance with both Federal and State laws is impossible, due to a conflict. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963). In applying those preemption principles to § 152(b)'s dual jurisdictional scheme for telephone regulation designed by Congress, the FCC has traditionally applied an "end-to-end" jurisdictional analysis in preserving State authority over intrastate services where interstate and intrastate traffic can be separated. *Bell Atlantic Tel. Co. v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000).

In the *Pulver Declaratory Ruling*, the FCC rejected the end-to-end analysis for computer-to-computer VoIP because it was deemed "unhelpful" and because the concept of end points "has little relevance" to pulver's FWD service. *Pulver Declaratory Ruling* at ¶ 21. Unlike pulver.com's FWD service addressed in the *Pulver Declaratory Ruling*, VoIP services satisfying the Ohio Commission's proposed four-part test could easily be separated into intrastate and interstate traffic. This is because, under the Ohio-proposed test, sorting traffic for services using the PSTN to complete calls through NANP telephone numbers would be

done in the same manner it is done today for POTS calls. For those VoIP services that satisfy Ohio's four-part test, there would still be two distinct end points for each communication –just like today's POTS calls. Thus, separation into interstate and intrastate classifications would not be any different than doing so for POTS calls today.

Similarly, the FCC's "mixed-use" doctrine cannot justify broad preemption of State authority over those VoIP-enabled services that pass muster under Ohio's proposed definitional test. Because calls placed using NANP numbers over the PSTN can be easily separated into intrastate and interstate, the mixed-use doctrine is inapplicable. The fact that various calling plans or features may be packaged or bundled for retail marketing purposes is immaterial to the jurisdictional analysis. Again, this is no different from POTS service today; it would be unthinkable for the FCC to apply its mixed use rationale to a local/toll package and assert exclusive jurisdiction over the entire service bundle to the exclusion of State commission authority. Likewise, VoIP telecommunication service bundles must be classified based upon the jurisdictional nature of the individual service components, for jurisdictional purposes.

In sum, although there may be some practical arguments that could support a broad-based federal policy concerning VoIP telecommunication services, existing legal constraints prevent the FCC from taking an approach that

attempts to holistically exclude State authority. And even from a policy (*i.e.*, non-legal) viewpoint, considerations of uniformity do not alone justify a one-size-fits-all approach to VoIP. After all, the lack of uniformity in regulation of telecommunications, in and of itself, has not created a barrier to competition historically. On the contrary, local telephone competition has significantly developed since 1996 even though there are varied approaches to State regulation of CLECs' retail service offerings and competitive service providers. And, of course, no State commission has imposed traditional economic regulation to CLECs' provision of local telephone service. Instead of a pre-emptive or rigid national VoIP policy, the FCC should consider promulgating default or minimum requirements that allow State commissions an enforcement role and preserve additional flexibility for State commissions to fill in regulatory gaps only as needed. This type of an approach would promote federal-state cooperation and help reduce conflict, while also recognizing that it is more practical and effective to leave retail consumer issues and day-to-day enforcement matters to States.

There is no shortage of regulatory and consumer issues that arise if VoIP-enabled services are broadly considered to be exclusively interstate or considered as "information services." Although much of the policy debate tends to gravitate philosophically toward regulation versus deregulation, that is more rhetoric than

substance. After all, the FCC is considering many of the same issues that States would consider and there is no basis to generally conclude that States would impose burdensome requirements. Like the FCC, the Ohio Commission believes that a minimalist or "light touch" regulatory approach should be taken with respect to VoIP services. Even if the FCC broadly classifies VoIP-enabled telecommunication services under Title I (overruling the Ohio Commission's arguments), many of the same basic policies should apply. Below, we offer policy recommendations to the FCC concerning certain key regulatory issues implicated by the proliferation of VoIP-enabled services, all of which we trust the FCC will seriously consider regardless of its jurisdictional conclusions.

II. Important policy considerations support the Ohio Commission's position independent of the legal/jurisdictional framework utilized by the FCC.

A. UNIVERSAL SERVICE PROGRAMS FUNDING

The FCC invites comments on how the regulatory classification of IP-enabled services would affect the FCC's ability to fund universal service. In particular, the FCC asks commenters to address the contribution obligations of both facilities-based and non-facilities based providers of IP services. The FCC notes that these issues are intertwined with the issues raised in its separate Universal Service Contribution Methodology proceeding. NPRM at ¶ 63. The FCC also notes that it must evaluate how regulatory classifications of IP-enabled services affect the FCC's universal support mechanisms since the current the definition in section 254(1) is explicitly limited to telecommunications. NPRM at ¶ 65. The FCC also seeks to develop a record on whether there is a fundamental need to reexamine its universal service paradigm if consumers increasingly utilize other platforms unsupported by universal service funds to fulfill their communications needs. NPRM at ¶ 66.

The 1996 Act incorporates principles of Universal Service so that all consumers "including low-income consumers and those in rural, insular, and high cost areas" have access to affordable telecommunications services. 47 U.S.C.

§ 254 (b)(3) (West 2004). To do so, "all providers of telecommunications services" are required to make contributions to preserve and advance those universal service goals. 47 U.S.C. § 254 (b)(4) (West 2004). Congress required the FCC to "establish competitively neutral rules" in connection with universal service. 47 U.S.C. § 254 (b)(2)(A) (West 2004).

VoIP and similar nontraditional technologies providing local telephone service could undermine the current universal service program's system of support. Therefore, VoIP service providers with access to the PSTN must provide USF support to the PSTN. The Ohio Commission observes that the value of VoIP service to potential customers would be significantly diminished if these services had no access to the PSTN. Consequently, if the VoIP telecommunication providers are to benefit from such access they must also be willing to meet the obligations inherent to the provision of local telephone service to provide such payments to the USF.

The Ohio Commission maintains that the FCC must ensure that all providers that interconnect with the PSTN are rendered nondiscriminatory assessments for the funding of universal service programs regardless of the regulatory classification (*e.g.,* CMRS, VoIP, CLEC, IXC, or ILEC). Not rendering assessments on an equal basis would result in unfair pricing advantages to VoIP providers furnishing local telephone service. Also, arbitrary assessments could

promote the gaming of regulation or "regulatory arbitrage" that could encourage ILECs to establish VoIP affiliates and to move their most lucrative customers to that affiliate to avoid support payments. If the FCC rules are not amended to take into consideration new technologies, eventually only a limited number of companies and customers will be providing USF support, resulting in under-funded programs and disproportionately high charges to customers on traditional networks.

VoIP information service providers would be able to avoid USF assessments and sidestep the inherent responsibilities and obligations associated with providing local telephone service. Allowing this situation to continue is contrary to the long-term goal of establishing regulatory parity for all local service providers regardless of the technology used to deliver the service. If alternative technologies are not subject to USF assessments, funding sources will erode. That would result in unreasonably priced services to economically disadvantaged customers and customers in rural areas. Those customers without competitive choice will support the PSTN disproportionately through increased surcharges or higher basic rates needed to support the USF. Ultimately, such a trend could be fatal to the entire USF program.

The Ohio Commission also recommends that the FCC adopt rules that are cognizant of the potential need for States to establish their own USF programs to

ensure reasonable and affordable local rates. The FCC should maintain clear lines of demarcation between State and Federal jurisdictions when rendering assessments to carriers for funding of their respective programs. 47 U.S.C. § 254(f) (West 2004). Recently, the FCC has been taking into account informal and formal proposals (see FCC February 26, 2002, NPRM in 96-45) to restructure the Federal universal service program's funding mechanisms. One popular proposal is to render assessments for interstate programs to customers on a per-line or telephone number basis. Currently, the FCC limits its assessments only to interstate revenues. If the FCC were to use this proceeding to blur the distinction between interstate and intrastate assessments to render a per-line or per-telephone number charge, it would result in local customers bearing the total expense for USF and interstate carriers (IXCs) paying nothing at all. This problem is further complicated in those instances where a State also renders its own intrastate assessment.

B. TELECOMMUNICATIONS RELAY SERVICE

The FCC seeks comment on how migration to IP-enabled services will affect its statutory obligation to ensure that interstate and intrastate telecommunications services are available to hearing-impaired and speech-impaired individuals. Section 225 created a cost recovery mechanism whereby providers of telecommunications relay services (TRS) are compensated for the

reasonable costs of providing TRS. The FCC is to prescribe regulations ensuring that those costs be recovered from all subscribers for every interstate and intrastate jurisdiction. The FCC seeks comments on how its decision in this proceeding might affect contributions to the TRS. And the FCC sought comments on how any change in its TRS rules will affect the provision of TRS by the States. NPRM at ¶ 60.

The FCC's rules in CC Docket No. 90-571 instituting Title IV of the Americans with Disabilities Act required that, to the extent that States administer their intrastate TRS programs, funding for such services must be limited to assessments on carriers' intrastate revenues. Likewise, interstate TRS is to be funded through assessments on the interstate jurisdiction.

Similar to the Ohio Commission's concerns regarding USF, the FCC should be mindful of the State's current requirements to fund their intrastate TRS programs to the communicatively disabled. States should be permitted to render assessments for TRS to VoIP telecommunication providers that interconnect to the PSTN to the extent they provide services that originate and terminate within the state boundaries. This situation also illustrates the need for the FCC to maintain clear lines of demarcation not to commingle assessments across jurisdictions. And, like USF, avoiding TRS charges for VoIP providers alone

would promote regulatory arbitrage and uneconomic pricing advantages among direct competitors.

C. ACCESS CHARGES

The FCC requests comment on the extent to which access charges should apply to VoIP. The FCC questions that if these services are not classified as telecommunications services should the providers nevertheless pay for the use of the LECs' switching facilities. The FCC maintains that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. NPRM at ¶61. The NPRM asks whether it should forbear from applying access charges or impose different charges if IP-enabled services are classified as telecommunications service providers. NPRM at ¶62.

The Ohio Commission submits that all carriers interconnecting with the local exchange network must be subjected to access charges for use of the local network. Access rates should be rendered on a nondiscriminatory basis to all carriers connecting to the local exchange network. All users of the PSTN should pay for that usage. Specifically, LEC access rates to all providers of toll-like services (whether IXC or VoIP) must be rendered consistently by jurisdiction to all service providers. Adopting such a policy will ensure that one provider does not have a pricing advantage over the other. Embracing this policy will ensure

that carriers will not move their more lucrative customers to IP networks in an attempt to avoid costs associated with supporting the PSTN. Such migration would ultimately result in the degradation of the PSTN.

The FCC should also reaffirm that State commissions retain jurisdiction over intrastate access charges regardless of whether calls are terminated by an interexchange carrier (IXC) or a VoIP provider furnishing intrastate toll services. The interstate access rates for mid- and small-size ILECs are lower than Ohio's intrastate access rates to carriers providing toll services. Thus, if the FCC were to attempt to declare all VoIP traffic that interconnects with the PSTN subject exclusively to Federal jurisdiction it would result in precipitous reductions in cash flows for many of Ohio's ILECs, particularly those located in rural areas. Expressed another way, any attempt by the FCC to adopt a national approach to VoIP regulation and a corresponding uniform national rate would most likely result in rural ILEC cash flow reductions and revenue shortfalls. These circumstances would ultimately cause an upward pressure on local rates to end users, potentially to the detriment of universal service. This situation would be further exacerbated if the FCC were to adopt a bill-and-keep regime where there would be no exchange of monies for the termination of traffic on another carrier's network.

D. CONSUMER SAFEGUARDS

The FCC's invites comments on whether FCC consumer protection statutes and rules should be applicable to VoIP. The FCC specifically asks whether disclosure of CPNI, "truth-in-billing" and slamming protections should be extended to customers of VoIP services. NPRM at ¶¶ 71 and 72. The FCC also asks what other federal consumer protections should be extended to VoIP services. NPRM at ¶ 72.

The Ohio Commission agrees with the FCC that an important issue in the deployment of VoIP services is the extent and scope of consumer safeguards afforded to customers of VoIP telecommunication services. The Ohio Commission recognizes that many requirements that were developed to protect consumers in a monopoly utility environment would not be appropriate. That is not to say, however, that VoIP telecommunications service offerings should not be subject to any consumer protections. Just as any other business-consumer relationship is subject to basic consumer protections, so should the VoIP telecommunications provider-subscriber relationship be afforded certain basic consumer protections. At a minimum, the FCC should require that generally applicable consumer protection rules that apply to all businesses should apply to VoIP providers that offer telecommunication services. Misrepresentation and over-promising the virtues of a new technology are not unusual with the introduction of products or services in the marketplace. The Ohio Commission's

telecommunications rules parallel state statutes which outlaw abusive marketing practices for consumer transactions involving other types of businesses' products and services.

Similarly, the FCC should require general consumer protections that include appropriate disclosure requirements. Consumers need to be informed of differences that VoIP telecommunication service offerings may have in comparison to "traditional" phone service. Customers need to know how to avoid disconnection of their local telecommunications service, particularly where the VoIP telecommunication service is bundled with products such as long distance, ISP and entertainment services. Basic requirements such as customer notice of disconnection or default are commonplace in other industries such as rental agreements or mortgage payments. The Ohio Commission simply suggests that VoIP providers that offer telecommunication services should be held to the same standards as other comparable businesses offering products and services in the marketplace.

The Ohio Commission believes that access to 9-1-1, prohibition of obscene or harassing telephone calls, and accommodations for consumers with disabilities are important parts of the current telecommunications scheme that would also be appropriate for VoIP providers that offer telecommunication services. Additionally, the Ohio Commission believes it is appropriate to

consider extending federal consumer protections, such as CPNI, truth in billing, and slamming protections, to customers of VoIP telecommunication services.

Federal CPNI requirements restrict telecommunication carriers' use and disclosure of CPNI. The rationale for these restrictions is that carriers are in a unique position to collect sensitive personal information in which customers have a privacy interest. VoIP telecommunication service providers stand in the same unique position. Likewise, the federal rules that apply to carriers regarding "truth-in-billing" were enacted so that customers could readily understand their telephone bills. Customers of VoIP telecommunication services need the same level of billing information and clarity since new service offerings can prove to be confusing to consumers.

FCC slamming rules were enacted to protect customers from the unauthorized switching of long distance carriers. Federal slamming rules do not protect consumers from the unauthorized switching of basic local telecommunications service. In Ohio, the federal slamming rules are complimented by the state's slamming laws which, in combination, prohibit the unauthorized switching of local and long distance telecommunications. Ohio believes the prohibition against the unauthorized switching of a customer's account should be extended to customers of VoIP providers that offer telecommunication services that meet the Ohio four-prong test.

In sum, the Ohio Commission suggests that certain consumer protection statutes and rules should be made applicable to VoIP providers offering telecommunication services. The Ohio Commission believes that a partnership between the FCC and the states may be the most efficient and effective regulatory scheme to handle complaints and to ensure basic consumer safeguards without unduly restricting the deployment of VoIP services from providers that offer telecommunication services. State commissions have played a vital role as knowledgeable, accessible forums for efficiently resolving disputes between customers and carriers. If the FCC were to establish a national regulatory scheme, several examples of partnerships between federal and state government exist that successfully enforce uniform standards nationally and allow states to handle consumer complaints locally.

E. LNP AND NUMBER ADMINISTRATION/CONSERVATION

As the NPRM points out, the 1996 Act imposes additional requirements on LECs including the obligation to provide local number portability (LNP) to end users and the FCC inquires whether this requirement, among other economic regulations, should continue to apply to IP-enabled services. NPRM at ¶¶73-74. In numerous comments filed with the FCC, the Ohio Commission has consistently advocated the importance of LNP as a tool for customer choice in a competitive market. The ability to retain one's telephone number when

switching between providers removes a significant barrier to customer migration. Further, the FCC and State commissions have recognized the importance of the participation of all segments of the industry in order for customers to recognize maximum benefit from the LNP requirement. As a result, the FCC, through numerous rules and orders, has consistently stressed the importance of LNP for customers in the landline, wireless and intermodal markets.

If certain IP-enabled service providers are able to avoid the requirement by partnering with, or obtaining service from, a certified provider to obtain telephone numbers but not to allow LNP, the Ohio Commission is concerned that a confusing patchwork of LNP deployment may result. Thus, the Ohio Commission strongly advocates that this important initiative apply equally to IP-enabled telecommunication service providers as it does to all other providers of local service, including wireless providers. As discussed in greater detail below, not only does LNP promote competitive choice, but it also leads to more efficient utilization of telephone numbers.

Telephone numbers allow customers of IP-enabled services to connect to the PSTN. The ability to use the NANP is accompanied by the obligation to efficiently use the resource. The FCC recognizes that some action regarding IP-

enabled services may be necessary to maximize the use and life of numbering resources in the NANP. NPRM at ¶76.

The Ohio Commission recognizes and appreciates the cooperative partnership between the FCC and State commissions with regard to implementing measures that optimize use of the NANP. As a result of this partnership, the Ohio Commission devotes a significant amount of time to enforcing number administration and conservation rules. First and foremost, pursuant to FCC rules, carriers are required to obtain state certification prior to obtaining numbering resources. Upon certification in Ohio, carriers must affirm that they will participate in number conservation measures including LNP and thousands-block number pooling.[3] Carriers are not granted statewide authority in Ohio but, rather, are certified on an exchange basis where they have obtained appropriate interconnection or traffic termination agreements with the underlying ILECs in the areas the carrier will serve. By requiring State certification, the Ohio Commission is able to ensure that numbers are assigned to carriers only where the carrier has made a commitment to serve and the company is authorized to operate. The Ohio Commission is concerned that if IP-enabled companies offering telecommunication services are not certified, or if they obtain numbers from a CLEC "partner" without either involved company

[3] PUCO Case No. 99-998-TP-COI, Telephone Service Requirements Form, Page 13, April 7, 2003.

addressing these compliance issues, it will frustrate the ability of the Ohio Commission to enforce number conservation requirements directly on such carriers.

Moreover, pursuant to delegated authority from the FCC, the Ohio Commission engages in number reclamation and safety valve processes. Through number reclamation, the Ohio Commission has been effective in returning a significant number of NXXs and thousands-blocks to the NANP by working cooperatively with certified local service providers and CMRS providers. Further, we have approved numerous safety valve applications when carriers are denied resources from NeuStar and must petition the Ohio Commission to overturn NeuStar's denial. We have generally found that carriers are responsive to our staff and appear to appreciate the ability to bring safety valve requests before the Ohio Commission for expedient resolution. Other important number conservation measures include reviewing carrier number resource and utilization data (NRUF) and ensuring that these carriers are using numbers efficiently and participating in thousands-block number pooling where appropriate. Again, the FCC has recognized and encouraged state participation as state commissions have the ability to review the relevant data and react in a timely manner to those carriers that may be avoiding compliance with FCC rules in this area. The Ohio Commission urges the FCC to impose all current number

resource utilization and forecasting requirements for IP-enabled services that utilize numbering resources.

A final number administration concern that the Ohio Commission would like to highlight is with regard to the non-geographic assignment of telephone numbers by some IP-enabled telecommunication service providers. Generally, carriers obtain telephone numbers in rate centers where they plan to assign numbers to customers geographically located within those rate centers. The Ohio Commission recognizes that CMRS providers do not always geographically assign telephone numbers. However, the FCC, in a recent order regarding LNP, required wireless carriers, consistent with previous rulings for wireline carriers, to maintain the original rate center designation of the ported telephone number. Specifically, the FCC stated, "…a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port[4]." If IP-enabled carriers providing telecommunication service are permitted to ignore these requirements and assign numbers without regard to customer location or to allow porting outside of the original rate center boundaries, certain areas of the country with "desirable" area codes such as Los Angeles, New York City, or even Cleveland may experience an

[4] FCC CC Docket 95-116, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, November 10, 2003 at ¶28.

accelerated exhaust situation. Therefore, to the extent that IP-enabled providers are engaged in the assignment and porting of telephone numbers, the Ohio Commission urges the FCC to apply its current rate center designation requirements to those providers.

Currently, LNP and number administration/conservation is a Federal-State partnership that includes a significant role for state commissions in terms of enforcement of the efficient use of telephone numbers and the availability of LNP to customers in all markets. The Ohio Commission recommends that this role, including all current LNP, number administration and conservation requirements, be preserved by the FCC with regard to IP-enabled telecommunication services that utilize, either directly or indirectly, numbering resources from the NANP.

F. INTERCONNECTION

The FCC requested comments that focus on the reasons why particular regulations should or should not be applied to particular VoIP services. As this request relates to interconnection, the FCC asked for comments regarding interconnection with the PSTN. NPRM at ¶ 37. As mentioned above, VoIP providers offering services that are properly considered "telecommunications services" under Ohio's proposed four-part test are entitled to interconnection and binding arbitration when resolving interconnection issues with ILECs.

Consistent with the FCC's 251 interconnection requirements, State commissions are best suited and were designated by Congress to arbitrate interconnection disputes. And it also makes sense, from a policy perspective, to require those facilities-based and/or inter-exchange IP voice providers, which offer service through either their own networks or maintain control of a network that enables their customers to have access to the PSTN, to be subject to some regulatory oversight from the State commissions. As part of this oversight, these providers should be required to follow §§251 and 252 in seeking interconnection and following the binding arbitration process before State commissions.

The State commissions have practical experience, the necessary resources, and the time to address the multitude of issues that are presented in interconnection petitions. For example, the Ohio Commission has successfully completed numerous arbitration cases, all of which have been completed within the agreed-upon timeframes. Further, State commissions are familiar with the local economic conditions that may impact the issues presented in the petitions.

There is a risk that without the necessary State certification process, as well as application of §§251 and 252, ILECs may not recognize their obligation to interconnect with VoIP telecommunication service providers. This could be especially true where ILECs themselves are competing providers of VoIP telecommunication services. Ohio is aware that some cable operators which

have no CLEC affiliates are seeking State certification in order to negotiate interconnection arrangements with various ILECs. Without State certification and arbitration/enforcement regarding interconnection issues, there could be a setback to advancing facilities-based local competition.

As discussed above, the 1996 Act creates a federal-state partnership for the implementation of interconnection issues related to §§251 and 252 and this partnership should be preserved relative to VoIP services that are properly considered telecommunications services. State certification and interconnection oversight can also provide companies with a form of validation or legitimacy, that can be used for marketing and market entry purposes. Thus, regardless of the regulatory approach adopted by the FCC for VoIP services interconnecting with the PSTN, the FCC should be mindful of the State commissions' continued need to oversee interconnection agreements between VoIP providers and the ILECs.

CONCLUSION

The Ohio Commission wishes to thank the FCC for the opportunity to comment in this proceeding.

Respectfully submitted,

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